



40 CFR Part 52

[EPA-R01-OAR-2011-0118; A-1-FRL-9644-6]

Approval and Promulgation of Air Quality Implementation Plans; Rhode Island; Reasonably Available Control Technology (RACT) for the 1997 8-Hour Ozone Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving four State Implementation Plan (SIP) revisions submitted by the Rhode Island Department of Environmental Management (RI DEM). These revisions demonstrate that the State of Rhode Island meets the requirements of reasonably available control technology (RACT) for oxides of nitrogen (NO_x) and volatile organic compounds (VOCs) set forth by the Clean Air Act (CAA) with respect to the 1997 8-hour ozone standard. The intended effect of this action is to approve Rhode Island's RACT demonstration and the submitted regulations and incorporate them into the Rhode Island SIP. Additionally, EPA is approving Rhode Island's negative declarations for several categories of VOC sources. This action is being taken in accordance with the CAA.

DATES: This rule is effective on **[Insert date 60 days from date of publication in the Federal Register]**, unless EPA receives adverse comments by **[Insert date 30 days from date of publication in the Federal Register]**. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the Federal Register informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA-R01-OAR-2011-0118 by one of the following methods:

1. www.regulations.gov: Follow the on-line instructions for submitting comments.
2. E-mail: arnold.anne@epa.gov
3. Fax: (617) 918-0047.
4. Mail: "Docket Identification Number EPA-R01-OAR-2011-0118," Anne Arnold, U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, Air Quality Planning Unit, 5 Post Office Square - Suite 100, (Mail code OEP05-2), Boston, MA 02109 - 3912.
5. Hand Delivery or Courier. Deliver your comments to: Anne Arnold, Manager, Air Quality Planning Unit, Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, Air Quality Planning Unit, 5 Post Office Square - Suite 100, (Mail code OEP05-2), Boston, MA 02109 - 3912. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding legal holidays.

Instructions: Direct your comments to Docket ID No. EPA-R01-OAR-2011-0118. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through www.regulations.gov, or e-mail, information that you consider to be CBI or otherwise protected. The

www.regulations.gov website is an “anonymous access” system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the www.regulations.gov index.

Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form.

Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy at Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square - Suite 100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office’s official hours of business are Monday through Friday, 8:30 to 4:30, excluding legal holidays.

In addition, copies of the state submittal and EPA's technical support document are also available for public inspection during normal business hours, by appointment at the State Air Agency; Office

of Air Resources, Department of Environmental Management, 235 Promenade Street, Providence, RI 02908-5767.

FOR FURTHER INFORMATION CONTACT: David Mackintosh, U.S. Environmental Protection Agency, New England Regional Office, Office of Ecosystem Protection, Air Quality Planning Unit, 5 Post Office Square - Suite 100, Mail Code OEP05-02, Boston, MA 02109-3912, telephone 617-918-1584, facsimile 617-918-0584, email mackintosh.david@epa.gov.

SUPPLEMENTARY INFORMATION:

Throughout this document whenever “we,” “us,” or “our” is used, we mean EPA.

Organization of this document. The following outline is provided to aid in locating information in this preamble.

- I. Background and Purpose.
- II. Summary of Rhode Island’s SIP revisions.
- III. EPA’s Evaluation of Rhode Island’s SIP revisions.
 - A. RACT Demonstration
 - B. Other VOC Rules
- IV. Final Action.
- V. Statutory and Executive Order Reviews.

I. Background and Purpose.

In 1997, EPA revised the health-based National Ambient Air Quality Standard (NAAQS) for ozone, setting it at 0.08 parts per million (ppm) averaged over an 8-hour time frame. EPA set the 8-hour ozone standard based on scientific evidence demonstrating that ozone causes adverse health effects at lower ozone concentrations and over longer periods of time than was

understood when the pre-existing 1-hour ozone standard was set. EPA determined that the 8-hour standard would be more protective of human health, especially with regard to children and adults who are active outdoors, and individuals with a pre-existing respiratory disease, such as asthma.

On April 30, 2004, pursuant to the Federal Clean Air Act (the Act, or CAA), 42 U.S.C. 7401 et seq., EPA designated portions of the country as being in nonattainment of the 1997 8-hour ozone NAAQS (69 FR 23858). The entire State of Rhode Island was designated as nonattainment for ozone and classified as moderate. The entire State of Rhode Island is also part of the Ozone Transport Region (OTR) under Section 184(a) of the CAA. Sections 182(b)(2) and 184 of the CAA compel states with moderate and above ozone nonattainment areas, as well as areas in the OTR respectively, to submit a revision to their applicable State Implementation Plan (SIP) to include provisions to require the implementation of reasonable available control technology (RACT) for sources covered by a Control Techniques Guideline (CTG) and for all major sources. A CTG is a document issued by EPA which establishes a “presumptive norm” for RACT for a specific VOC source category.

EPA has determined that States which have RACT provisions approved in their SIPs for the 1-hour ozone standard have several options for fulfilling the RACT requirements for the 8-hour ozone NAAQS. If a State meets certain conditions, it may certify that previously adopted 1-hour ozone RACT controls in the SIP continue to represent RACT control levels for purposes of fulfilling 8-hour ozone RACT requirements. Alternatively, a State may establish new or more stringent requirements that represent RACT control levels, either in lieu of, or in conjunction with, a certification. In addition, a State may submit a negative declaration if there are no CTG sources or major sources of VOC and NO_x emissions in lieu of, or in addition to, a certification. See Final Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standard—Phase 2 (the Phase 2 Rule) (70 FR 71612; November 29, 2005).

As noted in the EPA's Phase 2 ozone implementation rule, the RACT submittal for the 1997 8-hour ozone standard was due from Rhode Island on September 16, 2006. (See 40 CFR 51.916(b)(2).) On March 24, 2008 (73 FR 15416), EPA issued a finding of failure to submit to Rhode Island for the 1997 8-hour ozone RACT requirement. This finding started an 18-month sanctions clock, as well as a 24 month Federal Implementation Plan (FIP) clock. On April 30, 2008, the RI DEM submitted a SIP revision which included an attainment demonstration, a RACT demonstration, and a reasonable further progress plan for the 8-hour ozone NAAQS. EPA determined the SIP revision complete on May 30, 2008, stopping the 18-month sanctions clock. Today's action only addresses the RACT demonstration portion of Rhode Island's submittal.

In addition, on September 22, 2008, RI DEM submitted a SIP revision containing revised Air Pollution Control (APC) Regulation No. 36, Control of Emissions from Organic Solvent Cleaning. Then, on October 27, 2009, RI DEM submitted a SIP revision containing three revised APC regulations: Regulation No. 25, Control of VOC Emissions from Cutback and Emulsified Asphalt; Regulation No. 31, Control of VOCs from Consumer Products; and Regulation No. 33, Control of VOCs from Architectural Coatings and Industrial Maintenance Coatings. Lastly, on March 25, 2011, RI DEM submitted a SIP revision for their new APC General Definitions Regulation.

II. Summary of Rhode Island's SIP revisions.

On April 30, 2008, RI DEM submitted a SIP revision titled, "The Rhode Island Attainment Plan for the 8-Hour Ozone National Ambient Air Quality Standard," which included a RACT demonstration in Chapter 6. Except for two source categories, solvent metal degreasing and asphalt paving, RI DEM determined that their existing VOC controls previously adopted as RACT under

the 1-hour ozone standard for CTG source categories and for non-CTG major sources still constitute RACT for the 8-hour ozone standard.

In its RACT demonstration, RI DEM committed to adopt and submit revised regulations for asphalt paving and solvent metal degreasing. Subsequently, on September 22, 2009, RI DEM submitted the SIP revision containing revised APC Regulation No. 36, Control of Emissions from Organic Solvent Cleaning, and on October 27, 2009, submitted a SIP revision containing revised APC Regulation No. 25, Control of VOC Emissions from Cutback and Emulsified Asphalt.

As part of its ozone attainment demonstration, Rhode Island also committed to submit revised regulations for consumer products and architectural and industrial maintenance coatings. On October 27, 2009, RI DEM submitted a SIP revision containing revised APC Regulations No. 31, Control of VOCs from Consumer Products, and No. 33, Control of VOCs from Architectural Coatings and Industrial Maintenance Coatings.

In addition, as stated in the RACT demonstration, RI DEM has determined that there are no applicable stationary sources of VOC in Rhode Island for certain CTG categories and makes a negative declaration for these categories:

1. Refinery Vacuum Producing Systems Wastewater Separators and Process Unit Turnarounds (1977)
2. Leaks from Petroleum Refinery Equipment (1978)
3. Manufacture of Pneumatic Rubber Tires (1978)
4. Large Petroleum Dry Cleaners (1982)
5. Manufacture of High-Density Polyethylene, Polypropylene and Polystyrene Resins (1983)
6. Synthetic Organic Chemical Mfg Equipment Fugitive Emissions (1984)
7. Synthetic Organic Chemical Mfg Air Oxidation Processes (1984)

Finally, the March 25, 2011, SIP revision included a new APC General Definitions Regulation. The newly created General Definitions Regulation contains over 40 terms that were previously defined in each individual APC regulation. Common terms were consolidated and some terms, such as “Volatile Organic Compound” were updated to be consistent with current federal definitions.

III. EPA’s Evaluation of Rhode Island’s SIP revisions.

A. RACT Demonstration

EPA has evaluated Rhode Island’s RACT regulations and has determined that they are generally consistent with the applicable EPA guidance documents. In the absence of any evidence to the contrary, EPA agrees with Rhode Island’s assertion that, with the exception of two CTG categories (cutback asphalt and solvent cleaning), the NO_x and VOC RACT regulations previously approved by EPA and incorporated into the Rhode Island SIP under the 1-hour ozone standard (see 58 FR 65933, 64 FR 67495, 62 FR 46202, and 65 FR 81743) continue to constitute RACT under the 8-hour ozone standard.¹

APC Regulation No. 25, Control of VOC Emissions from Cutback and Emulsified Asphalt was last approved by the EPA on December 2, 1999 (64 FR 67495). This APC regulation applies to anyone that solicits the use of or applies asphalt for road paving, maintenance, or repairs.² APC Regulation No. 25 was revised to prohibit, as of May 1, 2010, the use of cutback asphalt and limit the VOC³ content of emulsified asphalt used for road paving, maintenance, or repair during the

¹ It should also be noted that Rhode Island attained the 8-hour ozone standard by its applicable attainment date, June 15, 2010 (75 FR 64949, October 21, 2010).

² EPA interprets Rhode Island’s definitions of asphalt to specifically include cutback and emulsified asphalt. Rhode Island’s regulations define these asphalts as types of “asphalt cements,” which is an otherwise undefined term.

³ Section 25.2.3 of APC Regulation No. 25 specifies that VOC should be read to include Halogenated Organic Compounds (“HOC”). Rhode Island did not submit this provision to EPA as part of its SIP package. EPA is therefore not taking any action on this provision and for the purposes of federal law, APC Regulation No. 25 only applies to VOC content.

ozone season, which is May 1st through September 30th of each year. Based on the model rule developed by the Ozone Transport Commission (OTC) in November 2006, Rhode Island removed exemptions from Regulation No. 25 that previously permitted the use of cutback asphalt during the ozone season and set a more stringent limit on the ozone season VOC content of emulsified asphalt. The use of emulsified asphalt during the ozone season is prohibited unless its formulation data proves that the product contains less than 0.1 percent or less VOC by weight, as applied,⁴ or the applied emulsified asphalt contains not more than 6.0 milliliter of oil distillate per 200 milliliter sample using ASTM Method D 244 or AASHTO Method T 59. These restrictions apply only to road paving, maintenance, or repairs. Since the revised rule is more stringent than the previously approved cutback and emulsified asphalt VOC requirements, the new APC Regulation No. 25 satisfies the section 110(l) anti-backsliding requirements of the CAA. Case-by-case exemptions to the APC Regulation No. 25 requirements are only permitted with written approval from the RI DEM director and the EPA. The written approval by both RI DEM and EPA must be received *before* cutback or emulsified asphalt not meeting the requirements of section 25.3 may be used. In evaluating any request, EPA will consider the criteria specified in section 25.2.2.

APC Regulation No. 36, Control of Emissions from Organic Solvent Cleaning, was last approved by the EPA December 2, 1999 (64 FR 67495). The revisions to Regulation No. 36 require additional control measures that were recommended by the OTC to reduce VOC emissions from cold cleaning operations, which are also consistent with the Federal Maximum Achievable Control Technology (MACT) standard (40 CFR Part 63 Subpart T). The revisions specifically exempt cold cleaners using solvents containing 5 percent or less VOCs or volatile hazardous air pollutants (HAPs) from the regulation to encourage facilities to switch to aqueous based cleaners, many of which contain small amounts of solvents. Rhode Island's revised rule also includes the

⁴ To demonstrate that a formulation as applied has 0.1 percent or less VOC by weight, a person must supply VOC content of each emulsified asphalt component, in percent, as determined by an approved test method and the mix ratio for each emulsified asphalt component.

OTC's recommended solvent vapor pressure limit of 1.0 mm of mercury (Hg) for cold cleaning solvents. The addition of a vapor pressure limit makes Rhode Island's revised APC Regulation No. 36 more stringent than the previous version of the rule approved by EPA into the Rhode Island SIP (64 FR 67495; December 2, 1999), thus satisfying the anti-backsliding requirements of the CAA sections 110(l). Also, the low vapor pressure requirement is above and beyond the controls EPA has outlined as RACT in EPA's solvent cleaning CTG (EPA-450/2-77-022, November 1977) and more stringent than the 8.0 mm Hg vapor pressure standard recommended in EPA's more recent CTG for Industrial Cleaning Solvents (EPA 453/R-06-001, September 2006).

Although APC Regulation No. 36 includes the low vapor pressure requirement found in the OTC model rule, Rhode Island's rule also includes a few specified exemptions from this requirement. Specifically, the requirement does not apply to cold cleaning machines: (1) used in "special and extreme solvent cleaning;" (2) for which use of such a solvent is demonstrated to result in unsafe operating conditions; or (3) that are located in a permanent total enclosure having control equipment that is designed and operated with an overall VOC removal efficiency of 90 percent or greater. The term "special and extreme solvent cleaning" is defined to mean the cleaning of metal parts in research, development, manufacture and rework of electronic parts, assemblies, boxes, wiring harnesses, sensors and connectors used in aerospace service or other high precision products for which contamination must be minimized. These exemptions from the low vapor pressure requirement are based on comments received by New York during the rulemaking on their solvent cleaning rule. New York's Part 226, "Solvent Metal Cleaning Processes," also includes these same exemptions from the low vapor pressure requirement. EPA approved New York's solvent cleaning rule on January 23, 2004 (69 FR 3237). As noted above, Rhode Island's low vapor pressure requirement is more stringent than requirements recommended in EPA guidance, as well as

requirements in the previously SIP-approved version of Rhode Island's No. 36 regulation, therefore, exemptions from this requirement are considered acceptable.

Rhode Island's April 30, 2008, RACT demonstration also references permits for applicable sources in the Ship Building and Repair CTG category. While Rhode Island does not have an APC regulation for ship building and repair, federally enforceable permits satisfy the CTG requirements for the two Rhode Island facilities in this category (Senesco and General Dynamics). The two permits cited in the RACT demonstration were issued pursuant to Rhode Island Regulation No. 9 Air Pollution Control Permits, which was approved by the EPA December 02, 1999 (64 FR 67495). These permits specify VOC limits for marine coatings for both general use and specialty applications that are consistent with EPA's CTG for Shipbuilding and Ship Repair Operations (EPA-453/R-94-032). Operating and compliance requirements are also included in the permits with detailed procedures to determine VOC contents of coatings to which thinning solvent will be added. The permits also prescribe testing, recordkeeping, and reporting requirements consistent with the EPA guidance document "Model Volatile Organic Compound Rules for Reasonably Available Control Technology," June 1992.

As discussed above, Rhode Island regulations and permits are consistent with the applicable EPA guidance. Therefore, EPA concludes that Rhode Island's RACT demonstration submitted on April 30, 2008, along with the subsequent submittals of APC Regulations 25 and 36 constitute RACT for the relevant source categories, and as such, Rhode Island has met the CAA requirement to submit RACT for the 1997 8-hour ozone standard.

B. Other VOC Rules

Rhode Island's revised APC Regulation No. 31, Control of VOCs from Consumer Products and Regulation No. 33, Control of VOCs from Architectural Coatings and Industrial Maintenance

Coatings were previously approved by EPA on December 2, 1999 (64 FR 67495), as contingency regulations that would be triggered only if Rhode Island failed to achieve the 15 percent VOC reduction requirements of the CAA. The regulations were never triggered and, thus, the emissions limits in the rules have not been effective. The revised versions of APC Regulations No. 31 and No. 33 are not contingency regulations and compliance with emission limits in these rules was due by July 1, 2009. Therefore, the two regulations are more stringent than the previous regulations that were never triggered, thus satisfying the anti-backsliding requirements of the CAA sections 110(l).

The revised APC Regulations No. 31 and No. 33 limit the VOC content of 102 categories of consumer products and 53 categories of architectural and industrial maintenance (AIM) coatings, respectively. The limits in Rhode Island's AIM rule are based on an OTC model rule developed in 2001, while Rhode Island's consumer products limits reflect the 2006 OTC updates in addition to the 2001 limits. Rhode Island's Regulation 31 contains limits for more categories of consumer products than the EPA's National Volatile Organic Compound Emission Standards for Consumer Products rule at 40 CFR Part 59 Subpart C (63 FR 48831; September 11, 1998). The Rhode Island Regulation 31 limits are equal to, or more stringent than, those found in the EPA consumer products rule.

The consumer products listed in APC Regulation No. 31 include items sold to retail consumers for household or automotive use as well as products used in commercial and institutional settings, such as beauty shops, schools and hospitals.⁵ The revised regulation has 102 categories with VOC content limits equal or less than the previous contingent consumer product

⁵ In a letter dated February 1, 2012, Rhode Island withdrew sections 31.2.3 through 31.2.5 from consideration as part of its SIP. EPA is therefore not acting on these provisions. These provisions, providing exemptions from the rule, are still valid as a matter of state law. For an exemption approved under these provisions to be federally enforceable and limit EPA's authority to enforce the general VOC content provisions, the specific exemption must be approved as a SIP revision. Until Rhode Island submits an exemption to EPA and EPA approves that exemption as a SIP revision, the exemption is not effective as a matter of federal law. See 61 FR 38665.

limits. Since the previous limits were never enacted, the revised rule is more stringent and thus meets the anti-backsliding requirements in the CAA sections 110(l). In addition to the VOC emissions limits, APC Regulation No. 31 includes the following:

1. Limits on toxic contaminants in antiperspirants and deodorants and other consumer products;
2. Requirements for charcoal lighter materials, aerosol adhesives and floor wax strippers;
3. Requirements for products containing ozone-depleting compounds;
4. Product labeling requirements; and
5. Record keeping, reporting and testing requirements.

APC Regulation No. 33, Control of VOCs from Architectural Coatings and Industrial Maintenance Coatings, applies to anyone who sells, offers for sale, supplies, manufactures, applies or solicits the application of AIM coatings. The revised regulation has 53 coating categories with VOC content limits less than or equal to the previous contingency AIM limits. The limits are also less than or equal to the corresponding categories found in EPA's National Volatile Organic Compound Emission Standards for Architectural Coatings at 40 CFR Part 59 Subpart D (63 FR 48877; September 11, 1998). Since the previous limits were never enacted, the revised rule is more stringent and thus meets the anti-backsliding requirements in the CAA sections 110(l).

In addition to the limits on the VOC content of the coatings, the rule includes the following:

1. Painting practice and thinning specifications;
2. Requirements for rust preventative coatings, lacquers and AIM coatings not specifically listed in the regulation;
3. Product labeling requirements;
4. Record keeping, reporting and testing requirements.

As outlined above, Rhode Island's revised Regulation No. 31, without the exemptions contained in 31.2.3 through 31.2.5 that were withdrawn, and Regulation No. 33 are more stringent than EPA's national rules for consumer products and AIM coatings and more stringent than the previous SIP-approved versions of these regulations. Therefore, with the conditions discussed, EPA finds Rhode Island's Regulations No. 31 and 33 approvable.

Finally, Rhode Island's new General Definitions regulation contains over 40 terms that were previously defined in each individual APC regulation. EPA has reviewed this rule and has found that many of the definitions were previously approved into the Rhode Island SIP. The term "volatile organic compound" was updated to be consistent with updates to the federal definition of this term. See 40 CFR Part 51.100(s). Therefore, EPA finds Rhode Island's rule to be approvable.

IV. Final Action.

EPA is approving Rhode Island's April 30, 2008 RACT certification and negative declarations as meeting RACT for the 1997 8-hour ozone standard. EPA is also approving the following Rhode Island regulations and incorporating them into the Rhode Island SIP: revised APC Regulation No. 25, Control of VOC Emissions from Cutback and Emulsified Asphalt (with the exception of Section 25.2.3 which the state did not submit as part of the SIP revision); revised APC Regulation No. 31, Control of VOCs from Consumer Products (with the exception of Sections 31.2.3–31.2.5 which were withdrawn from consideration as part of the SIP revision); revised APC Regulation No. 33, Control of VOCs from Architectural Coatings and Industrial Maintenance Coatings; revised APC Regulation No. 36, Control of Emissions from Organic Solvent Cleaning; and new APC General Definitions Regulation.

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed

rules section of this Federal Register publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should relevant adverse comments be filed. This rule will be effective **[Insert date 60 days from date of publication in the Federal Register]** without further notice unless the Agency receives relevant adverse comments by **[Insert date 30 days from date of publication in the Federal Register]**.

If the EPA receives such comments, then EPA will publish a notice withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on the proposed rule. All parties interested in commenting on the proposed rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on **[Insert date 60 days from date of publication in the Federal Register]** and no further action will be taken on the proposed rule. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

In addition, Rhode Island was issued a finding a failure to submit which started an 18 month sanctions clock and a 24 month Federal Implementation Plan (FIP) clock. The 18 month sanctions clock was stopped when Rhode Island submitted the SIP and EPA determined it complete on May 30, 2008. The 24 month FIP clock will stop upon the effective date of our final approval, **[Insert date 60 days from date of publication in the Federal Register]**.

V. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40

CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and

- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to

publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[Insert date 60 days from date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: February 9, 2012.

H. Curtis Spalding,
Regional Administrator,
EPA New England.

Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52 - [AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart OO - Rhode Island

2. In § 52.2070:

a. Table (c) is amended by adding one new entry (APC General Definitions Regulation) at the beginning of the table, and revising existing entries for Air Pollution Control Regulation Nos. 25, 31, 33, and 36; and

b. Table (e) is amended by adding two new entries at the end of the table.

The additions and revisions read as follows:

§52.2070 Identification of plan.

* * * * *

(c) EPA approved regulations.

EPA-Approved Rhode Island Regulations

State citation	Title/subject	State effective date	EPA approval date	Explanations
Air Pollution Control General Definitions Regulation.	General Definitions.	9/29/2010	[Insert date of <u>FR</u> publication] [Insert <u>Federal Register</u> page number where the document begins]	
*	*	*	*	*
Air Pollution Control Regulation 25.	Control of VOC Emissions from Cutback and Emulsified Asphalt.	11/12/2009	[Insert date of <u>FR</u> publication] [Insert <u>Federal Register</u> page number where the document begins]	All of No. 25 is approved with the exception of Section 25.2.3 which the state did not submit as part of the SIP revision.
*	*	*	*	*

Air Pollution Control Regulation 31.	Control of VOCs from Commercial and Consumer Products.	6/4/2009	[Insert date of <u>FR</u> publication] [Insert <u>Federal Register</u> page number where the document begins]	All of No. 31 is approved with the exception of Sections 31.2.3 through 31.2.5 which deal with exemptions to the general provisions of the rule and were withdrawn by the state from consideration as part of the SIP revision.
*	*	*	*	*
Air Pollution Control Regulation 33.	Control of VOCs from Architectural Coatings and Industrial Maintenance Coatings.	6/4/2009	[Insert date of <u>FR</u> publication] [Insert <u>Federal Register</u> page number where the document begins]	
*	*	*	*	*
Air Pollution Control Regulation 36.	Control of Emissions from Organic Solvent Cleaning.	10/9/2008	[Insert date of <u>FR</u> publication] [Insert <u>Federal Register</u> page number where the document begins]	Revised to incorporate solvent vapor pressure limit of 1.0 mm Hg to meet 8-hour ozone RACT. All of No. 36 is approved with the exception of Section 36.2.2 which the state did not submit as part of the SIP revision.
*	*	*	*	*

* * * * *

(e) Nonregulatory.

Rhode Island Non Regulatory

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/effective date	EPA approved date	Explanations
*	*	*	*	*
RACT Demonstration included in Chapter 6 of the Rhode Island Attainment Plan for the 8-Hour Ozone National Ambient Air Quality Standard	Statewide	Submitted 04/30/2008	[Insert date of <u>FR</u> publication] [Insert <u>Federal Register</u> page number where the document begins]	

Negative declarations included in the Rhode Island Attainment Plan for the 8-Hour Ozone National Ambient Air Quality Standard	Statewide	Submitted 04/30/2008	<p>[Insert date of <u>FR</u> publication]</p> <p>[Insert <u>Federal Register</u> page number where the document begins]</p>	Includes negative declarations for the following Control Techniques Guideline Categories: Refinery Vacuum Producing Systems, Wastewater Separators, and Process Unit Turnarounds (1977); Leaks from Petroleum Refinery Equipment (1978); Manufacture of Pneumatic Rubber Tires (1978); Large Petroleum Dry Cleaners (1982); Manufacture of High-Density Polyethylene, Polypropylene and Polystyrene Resins (1983); Synthetic Organic Chemical Mfg Equipment Fugitive Emissions (1984); Synthetic Organic Chemical Mfg Air Oxidation Processes (1984).
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